

PROPERTY ASSESSMENT APPEAL BOARD
FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

PAAB Docket No. 2020-077-10017C

Parcel No. 320/00676-006-000

OldCastle APG Midwest Inc.,

Appellant,

v.

Polk County Board of Review,

Appellee.

Introduction

This appeal came on for hearing before the Property Assessment Appeal Board (PAAB) on July 23, 2021. Wayne Tannenbaum, a Senior Manager with Pivotal Tax Solutions (Pivotal), represented OldCastle APG Midwest Inc. Assistant Polk County Attorney Jason Wittgraf represented the Board of Review.

OldCastle is the owner of an industrial property located at 480 S 16th Street, West Des Moines. The property's January 1, 2020 assessment was set at \$1,480,000, allocated as \$406,000 in land value and \$1,074,000 to improvement value. (Ex. A). OldCastle petitioned the Board of Review contending its assessment was not equitable compared with assessments of other like property and was assessed for more than the value authorized by law. Iowa Code §441.37(1)(a)(1)(a & b). (Ex. C). The Board of Review denied the petition. (Ex. B).

OldCastle then appealed to PAAB.

General Principles of Assessment Law

PAAB has jurisdiction of this matter under Iowa Code sections 421.1A and 441.37A. PAAB is an agency and the provisions of the Administrative Procedure Act

apply. § 17A.2(1). This appeal is a contested case. § 441.37A(1)(b). PAAB may consider any grounds under Iowa Code section 441.37(1)(a) properly raised by the appellant following the provisions of section 441.37A(1)(b) and Iowa Admin. Code Rule 701–126.2(2-4). New or additional evidence may be introduced. *Id.* PAAB considers the record as a whole and all of the evidence regardless of who introduced it. *Id.*; see also *Hy-Vee, Inc. v. Employment Appeal Bd.*, 710 N.W.2d 1, 3 (Iowa 2005). There is no presumption that the assessed value is correct, but the taxpayer has the burden of proof. §§ 441.21(3); 441.37A(3)(a). The burden may be shifted; but even if it is not, the taxpayer may still prevail based on a preponderance of the evidence. *Id.*; *Compiano v. Bd. of Review of Polk Cnty.*, 771 N.W.2d 392, 396 (Iowa 2009) (citation omitted).

Findings of Fact

The subject property is currently occupied by Rhino Materials and consists of two light industrial buildings, a warehouse, and a metal utility building. The property was originally constructed in 1982 and underwent additions through 2015. For the January 1, 2020 assessment, the weighted year built is 1992. The gross building area (GBA) of all four structures is 27,586 square feet. The site is 8.55 acres. (Ex. A).

OldCastle submitted an unsigned¹ report developed by Pivotal Tax Solutions, Mesa, Arizona. (Ex. 1). The cover of the report incorrectly identified the business operating on the subject property as Manatts West Des Moines. It opines a value for the subject property using an average of the cost and sales comparison approaches at \$844,328.

Tannenbaum testified for OldCastle. Although he admits he has never physically inspected the subject property, he testified he has visited dozens of similar facilities and asserted generally such improvements are “not nice.” In his opinion, the materials, i.e. bricks and pavers, are the owner’s main concern and the improvements are basically

¹ Tannenbaum could not specify which employee of Pivotal prepared the report and questioned why that might be relevant. We note PAAB typically expects to be provided with the identity and qualifications of an author of an “expert” report submitted by any party. Tannenbaum testified he reviewed the report, but acknowledged he was not a certified appraiser in the state of Iowa.

shells; cheaply constructed and designed to protect the materials from the elements. Tannenbaum stated these types of facilities suffer from significant wear and tear.

Pivotal's report included a sales comparison approach to value and relied on five properties that sold between 2017 and 2019. (Ex. 1 p. 11-22). Tannenbaum testified the sales information was obtained through CoStar and no independent verification of the information was made. The sales were adjusted for size and age, but not condition, time, sale factors, or post sale improvements.

The Board of Review submitted the property record cards and other publicly available information for these sales. (Exs. J-U). It also questioned Tannenbaum about the transactions. Sale 1, reported by Pivotal as having a sale price of \$2.9 million was actually the result of a name change and merger which resulted in the deed being exempt under Iowa law because the consideration was five hundred dollars or less. (Exs. J-M). Sale 2, reported by Pivotal as a \$2 million-dollar sale was actually a merger of two printing companies, which Tannenbaum conceded would not be an arm's length transaction. (Exs. N-P).

Rather than review the sales on cross examination, Tannenbaum withdrew the sales comparison data from consideration and agreed to rely solely on the cost approach analysis. For this reason, we give no further consideration to OldCastle's sales comparison information – Exhibit 1 pages 11-22.

Tannenbaum explained that Pivotal's cost approach relied on MARSHALL AND SWIFT VALUATION, a national cost service, to develop the replacement cost new of the subject property. The approach concludes a cost new of \$29.84 per square foot for the two industrial buildings and a warehouse with a total of 23,536 GBA, for a total value of \$702,253. Tannenbaum acknowledged the report omitted the 4050 GBA of a warehouse that was built in 1999. (Exs. 1 p. 23). He agreed a correction of this error would add \$100,000 to \$153,000 to the value by the cost approach. The report identifies the improvements as class S (average), which according to reproduced pages from MARSHALL VALUATION SERVICE would not have heating or cooling. (Ex. 1 p.24-25). Tannenbaum testified he did not know whether the subject's improvements were heated, but conceded if they were, the base costs would be higher. The property record

card indicates most of the improvements are heated. (Exs. A & D). Tannenbaum also stated the base costs did not consider other features, such as wall heights or paving and fencing. The property record card and cost report reflect the subject improvements have wall heights ranging from 20 to 30 feet; and photographs of the subject site reflect substantial paving and fencing. Despite not physically inspecting the subject property, Tannenbaum contended the paving was in terrible shape. The photographs in the report do not support his opinion. (Ex. 1 p.1, 7-10).

Pivotal applied 80% depreciation to the two industrial buildings, as well as a 1.00 local multiplier, to arrive at a depreciated improvement value of \$340,461. Again, the report includes reproduced pages from MARSHALL VALUATION SERVICES reflecting this is the maximum amount of depreciation applied to commercial properties. (Ex.1, p. 26-28). Tannenbaum stated he did not review the depreciation tables in the IOWA REAL PROPERTY APPRAISAL MANUAL which Iowa Code section 441.21(1)(h) requires assessors to follow. (Exs. E & F).

Tannenbaum conceded the assessed land value may be accurate and initially advised PAAB to disregard the land sales data in the report. (Ex. 1 p. 29). On cross examination, he conceded two of his land sales were dated (2018), Land Sale 1 was two times larger than the subject, and Land Sale 3 was not vacant at the time of sale. He also agreed Land Sales 1 and 3 were zoned differently than the subject and not near the subject. Nonetheless, the only adjustment made to these sales was for size. Pivotal used an average adjusted sale price of the land sales to arrive at a value of the subject's land of \$361,791. (Ex. 1, p. 29). Tannenbaum in summarization again conceded his main dispute is with the improvement's valuation, not the land.

The Board of Review called no witnesses. It contends Pivotal's cost approach is not a reliable indicator of the subject's value, given the subject's age and several missing aspects of the analysis. It asserts OldCastle has not submitted competent evidence that the subject is over assessed and thus has not shifted the burden to the Board of Review to uphold the assessment.

Analysis & Conclusions

OldCastle contends the subject property is inequitably assessed and over assessed as provided under Iowa Code section 441.37(1)(a)(1)(a & b).

We first address OldCastle's claim that the property is assessed for more than the value authorized by law. § 441.37(1)(a)(1)(b).

In an appeal alleging the property is assessed for more than the value authorized by law under Iowa Code section 441.37(1)(a)(2), the taxpayer must show: 1) the assessment is excessive and 2) the subject property's correct value. *Soifer v. Floyd Cnty. Bd. of Review*, 759 N.W.2d 775, 780 (Iowa 2009) (citation omitted).

In Iowa, property is to be valued at its actual value. § 441.21(1)(a). Actual value is the property's fair and reasonable market value. § 441.21(1)(b). Market value essentially is defined as the value established in an arm's-length sale of the property. *Id.* Sale prices of the property or comparable properties in normal transactions are to be considered in arriving at market value. *Id.* "In arriving at market value, sale prices of property in abnormal transactions not reflecting market value shall not be taken into account, or shall be adjusted to eliminate the effect of factors which distort market value, including but not limited to sales to immediate family of the seller, foreclosure or other forced sales, contract sales, discounted purchase transactions or purchase of adjoining land or other land to be operated as a unit." *Id.* Other factors and approaches to value, such as cost and income, can only be considered upon a showing that sales cannot readily establish the subject's actual value, but "the actual value shall not be determined by use of only one such factor." § 441.21(2).

The burden of proof is upon the taxpayer, who "must establish a ground for protest by a preponderance of the evidence. *Compiano v. Bd. of Review of Polk Cnty.*, 771 N.W.2d 392, 396 (Iowa 2009). But when the taxpayer "offers competent evidence that the market value of the property is different than the market value determined by the assessor, the burden of proof thereafter shall be upon the officials or persons seeking to uphold such valuation." Iowa Code § 441.21(3). To be competent evidence, it must "comply with the statutory scheme for property valuation for tax assessment

purposes.” *Soifer v. Floyd Cnty. Bd. of Review*, 759 N.W.2d 775, 782 (Iowa 2009) (citations omitted).

OldCastle submitted the Pivotal report to support its claim the subject is over assessed. Although Pivotal developed the sales comparison approach, Tannenbaum withdrew Pivotal’s sales comparable data and analysis from evidence and chose to rely solely on the cost approach set forth in the report. Tannenbaum did not testify that sales cannot readily establish the subject’s actual value. Accordingly, OldCastle did not establish that moving to other approaches to value was appropriate. Considering the foregoing, we find the remainder of the Pivotal report (cost analysis) does not comply with the statutory scheme, is not competent, and OldCastle has not demonstrated the property is assessed for more than authorized by law. Further, even if we were to consider the cost analysis, it was replete with omissions and errors in the description of the subject property, and did not account for all of the improvement’s features. Tannenbaum even acknowledge the land valuation under the cost approach may not be accurate or was hard to support with the referenced sale. We therefore give the Pivotal report no consideration.

OldCastle also claimed the subject property was inequitably assessed. To prove inequity, a taxpayer may show an assessor did not apply an assessing method uniformly to similarly situated or comparable properties. *Eagle Food Centers v. Bd. of Review of the City of Davenport*, 497 N.W.2d 860, 865 (Iowa 1993). Here, we find OldCastle failed to demonstrate the Assessor applied an assessing method in a non-uniform manner.

Alternatively, a taxpayer may show the property is assessed higher proportionately than other like properties using criteria set forth in *Maxwell v. Shivers*, 133 N.W.2d 709, 711 (Iowa 1965). The *Maxwell* test provides inequity exists when, after considering the actual (2019) and assessed (2020) values of similar properties, the subject property is assessed at a higher proportion of its actual value. OldCastle withdrew any sales data provided in Exhibit 1, so the Maxwell test cannot be completed. Thus, OldCastle’s inequity claim fails.

For these reasons, we find OldCastle has failed to support its claims.

Order

PAAB HEREBY AFFIRMS the Polk County Board of Review's action.

This Order shall be considered final agency action for the purposes of Iowa Code Chapter 17A (2016). Any application for reconsideration or rehearing shall be filed with PAAB within 20 days of the date of this Order and comply with the requirements of PAAB administrative rules. Such application will stay the period for filing a judicial review action.

Any judicial action challenging this Order shall be filed in the district court where the property is located within 20 days of the date of this Order and comply with the requirements of Iowa Code sections 441.38; 441.38B, 441.39; and Chapter 17A.



Elizabeth Goodman, Board Member



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